

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
(317) 232-9855

**FISCAL IMPACT STATEMENT**

**LS 7026**

**BILL NUMBER:** SB 371

**DATE PREPARED:** Feb 4, 2002

**BILL AMENDED:** Feb 4, 2002

**SUBJECT:** Medicaid Liens and Nonprobate Assets.

**FISCAL ANALYST:** Kathy Norris

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**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
X FEDERAL

**IMPACT:** State

**Summary of Legislation:** (Amended) This bill provides that a trust, life insurance policy, or prepaid funeral agreement is not exempt as a resource in determining Medicaid eligibility unless amounts remaining after delivery of services are payable to the Office of Medicaid Policy and Planning (OMPP) or the applicant's or recipient's estate. The bill also authorizes the OMPP to place a lien on a Medicaid recipient's real property if the Office determines that the recipient will not return to live in the property. The bill provides that the OMPP may not obtain a lien or enforce a lien in certain circumstances. It also provides that the OMPP may not enforce a lien against property with a value equal to or less than \$75,000. It also provides that a lien obtained by the OMPP is subordinate to a security interest of a financial institution in certain circumstances. The bill further provides that the OMPP, for assets not included in a probate estate, may enforce its claim only to the extent that the value of property exceeds \$75,000. It provides limitations on the liability of a nonprobate transferee who receives property from a recipient. The bill also provides that enforcement of a claim against assets not in a probate estate must be commenced not later than 12 months after the decedent's death.

**Effective Date:** (Amended) May 1, 2002; July 1, 2002; January 1, 2003.

**Explanation of State Expenditures:** (Revised) ***Real Property Lien Provisions:*** This bill would authorize the Office of Medicaid Policy and Planning (OMPP) to place a lien for the cost of all Medicaid expenditures made on behalf of the recipient on a recipient's real property if a determination is made that the individual will not return to live in the property. The bill would allow liens only on real property of Medicaid recipients that has a value in excess of \$75,000. OMPP is not authorized to seek or enforce a lien if the recipient's spouse, child sibling, or other caregivers are residing or continue to reside in the home under specified circumstances. In the event that the recipient returns to the home, OMPP is required to release the lien. OMPP had estimated that the improved ability to recover assets from recipient's estates would result in a savings to the program of \$2.7 M, or approximately \$1 M in state General Funds. That estimate did not include the \$75,000 limitation on the value of the real property.

Medicaid reports that the average value of real estate owned by institutionalized recipients with no spouse at home was approximately \$52,000. The limitation of allowing liens only on property with a value in excess of \$75,000 would limit the number of qualifying properties on which OMPP could seek to place liens.

***Recovery of Nonprobate Assets:*** The bill would also expand the type of assets from which OMPP may seek to recover the costs of a recipient's care. Current law limits the definition of the recipient's estate to the property and assets that are included in the probate estate. This definition excludes certain other types of property and assets to which recipients may have legal title or an interest, such as life estates and other types of trusts. The transfer of assets to these nonprobate forms of ownership or interest are some of the common methods used to shield assets from the Medicaid eligibility determination and recovery process. The extent to which assets valued in excess of \$75,000 are shielded from the state's recovery process is not known, but increased recoveries from individuals with resources available to help provide the cost of their care will result in savings to the state General Fund.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** The Family and Social Services Administration, Office of Medicaid Policy and Planning.

**Local Agencies Affected:** County Recorders.

**Information Sources:** Donna Sembroski, Family and Social Services Administration, Office of General Counsel, (317) 232-1282.